

**BOARD OF APPEALS CASE NO. 5152**

\*

**BEFORE THE**

**APPLICANT: David Lawrence**

\*

**ZONING HEARING EXAMINER**

**REQUEST: Special Exceptions to locate  
construction services and commercial equipment  
in the Agricultural District; 5102 Norrisville Road,  
White Hall**

\*

**OF HARFORD COUNTY**

\*

**Hearing Advertised**

**HEARING DATE: August 8, 2001**

\*

**Aegis: 6/13/01 & 6/20/01**

**Record: 6/15/01 & 6/22/01**

\*

\* \* \* \* \*

## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, David B. Lawrence, is seeking a Special Exception pursuant to Section 267-53D(1) and 267-53H(1) of the Harford County Code, to allow the storage of commercial equipment and construction services in an AG/Agricultural zone.

The subject parcel is located at 5102 Norrisville Road - Lands of Elsa Small, and is more particularly identified on Tax Map 8, Grid 4B, Parcel 70, Lot 4. The parcel consists of 5.2 acres, more or less, is zoned AG/Agricultural and is entirely within the Fourth Election District.

Mr. David B. Lawrence appeared and testified that he is the Applicant in this matter and is the owner of the subject parcel. Mr. Lawrence testified that he owns and operates a business primarily engaged in marine and shoreline work but secondarily involved in State Highway work, particularly salt and snow removal during the winter months. The witness testified that he also does hauling and quarry work. The Applicant described the parcel as 5.2 acres in size, with a long triangular shape accessed via a lane that serves panhandle lots on the parcel. Access to the lane is from MD Route 23, Norrisville Road. According to the witness, the parcel is bordered on one side by the BG&E power line right-of-way and on the other by a heavily forested area. The Applicant has a home, a shed and a barn on the parcel, as well as a 1,000 gallon diesel fuel tank. He intends to store a track loader, backhoe, bulldozer and seven dump trucks within a 30 foot by 40 foot metal pole building that he intends to construct on the property.

## **Case No. 5152 – David B. Lawrence**

The witness indicated that, in his opinion, none of this equipment is visible from other properties now because of the mature forested area and power line right of way but that he intends to construct the building anyway which will assure protection of his equipment as well as completely screen from view all of the equipment stored on site. The only deliveries to the parcel are fuel from Corbin Fuel Company. Dump trucks are normally stored at a lot in Bel Air but are fueled, washed and temporarily stored at the subject site. His access is to Norrisville Road and the witness stated that there is adequate site distance and that neither he nor any of his drivers have ever had a traffic issue entering or leaving the property. The witness stated further that drivers arrive at the property to drop off paper work or obtain fuel but trucks are often off site for extended periods of time depending on the nature and location of the projects. On cross-examination the witness stated that he does not need to use BG&E right-of-way for any purpose.

Mr. Hugo Vandewille testified that he lives directly to the right of the Applicant and is an adjoining property owner. The witness stated that he has no objection to the use and that neither he nor anybody else can see the truck storage area. He indicated that he would allow the Applicant to grade or make other entrance changes to further improve site distance or upgrade to a commercial entrance.

Next to testify was Stacey Clark-Tranter, another adjoining property owner. The witness stated that she has no objection to the proposed use and that she would be most impacted by any adverse effects because she lives closer than any other neighbor. This witness stated that the trucks are no loud or obtrusive and that the storage of these vehicles has not had any adverse impact on her, her family or her property.

Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning. Mr. McClune described the subject parcel as a densely wooded panhandle lot with gently rolling topography. The parcel borders the BG&E power line right-of-way and access is by a gravel lane that runs from Norrisville Road approximately two-tenths of a mile and serves two other panhandle lots.

## **Case No. 5152 – David B. Lawrence**

Mr. McClune stated that the Applicant's request satisfies all of the statutory requirements of both Code Section 267-53D(1) and 267-53H(1) in that the surrounding area is zoned AG, the equipment is entirely screened from view by dense forest, distance and a proposed building enclosure and the parcel size exceeds the 2 acre minimum requirement. Mr. McClune next described the proposed use in light of the "s "Limitations, Guides and Standards" of Section 267-9I and concluded that this use, at this location, had no greater or unusual impacts than this use at any other location within the AG zone. Mr. McClune stated that the Department of Planning and Zoning recommends approval of the proposed use.

In opposition appeared William E. Webb who lives at 5072 Norrisville Road. Mr. Webb objects to what he considers a commercial operation. The witness stated that he can see the trucks from his property during the winter time and that he can hear their engines at night. Mr. Webb stated that the sound of the engines have kept him up at night. The witness stated that he is quite concerned about traffic safety and trucks entering and leaving the road. He said that dump trucks cannot turn onto the Norrisville Road without crossing the center line because of the size of the trucks and the narrowness of the road. Upon cross-examination, the witness testified that he has a well-insulated log home and that he can hear other traffic along Norrisville Road.

Next in opposition appeared Richard Brooks who resides at 5142 Meadowview Road, approximately 1/2 mile away from the subject parcel. The witness stated that he lives in a 72 home subdivision and that he considers the Applicant's proposed use a commercial intrusion into the agricultural integrity of the area. The witness testified that he is concerned about traffic hazards associated with the ingress and egress of heavy trucks on and off of Norrisville road. The witness also said he can hear the sound of truck tailgates at all hours.

Next in opposition appeared Mr. Charles Watkins who lives at 5136 Meadowstream Garth, which is approximately 1/2 mile away from the subject parcel. Mr. Watkins expressed his concern regarding traffic issues, stating that he has children attending Norrisville Elementary School and that school buses cannot make the turn onto Urey Road, the road located just below the lane exiting the Applicant's property.

Mr. Stuart Broadwater appeared in opposition, stating that he is President of the Meadowstream Homeowner's Association and lives at 5107 Meadowview Drive. Mr.

## **Case No. 5152 – David B. Lawrence**

Broadwater stated that he had three concerns: (1) that these trucks pose a traffic safety concern because of the narrowness of Norrisville Road, evidenced by the school board's prohibition on buses entering Urey Road; (2) that this is a commercial activity; and (3) that no environmental impact study had been done regarding this proposal, particularly the storage of diesel fuel on the property. The witness also stated that, on occasion, he has had to get out of the way of a dump truck entering Norrisville Road because the trucks cannot turn out of the lane without crossing the centerline on Norrisville Road.

Mr. William McCartin appeared in opposition and stated that his property abuts the subject parcel as well as the other panhandle lots. His property is a 93 acres parcel in active farming activity. His concerns include the use of the Applicant's equipment to service remote uses not connected to the community. The witness stated that noise from the use of the trucks has continually gotten greater and has become very obtrusive over the last two years. At times the truck noise has awakened him from sleep. Lastly, Mr. McCartin described the point of ingress and egress from the Applicant's property as being on an "S" curve of Norrisville Road and consequently having limited site distance. He believes this is a real safety concern because of the dangerous location.

Last to testify in opposition was Mr. Edward Leimbach who lives at 5079 Norrisville Road. Like other opponents, Mr. Leimbach testified that he is concerned about the safety issues related to large dump truck traffic entering and leaving a curved area of Norrisville Road. The witness admitted that he really cannot hear the trucks and did not feel noise was a factor for him but did think that the Applicant's trucking business represented a business expansion in a rural/agricultural part of the county. He feared further business use intruding into what he believes should remain agricultural and residential use areas.

**CONCLUSION:**

The provisions of the Harford County Code applicable to this parcel and this application for Special Exception are:

**Section 267-51**

**“Purpose.**

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

**Section 267-52**

**“General regulations.**

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

## **Case No. 5152 – David B. Lawrence**

### **Section 267-53D(1)**

**“Motor vehicle and related services.**

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**
  - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
  - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
  - (c) A minimum parcel area of two (2) acres shall be provided.”**

### **Section 267-53H(1)**

**“Services.**

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.”**

**Additionally, the Hearing Examiner is guided by Code Section 267-9I entitled “Limitations, Guides and Standards”:**

**“In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:**

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of**

## **Case No. 5152 – David B. Lawrence**

traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

A special exception use involves a use which is permitted, once certain statutory criteria have been satisfied. It is a desirable use, which is attended with detrimental effects which require that certain conditions be met, and once met, it is a permitted use because the legislative body has made that policy decision. Mossburg v. Montgomery County, 107 Md. App. 1, 666 A 2d. 1253 (1995). In this case, the Applicant’s proposed use is a special exception use in the AG zone. The Applicant has demonstrated that his use meets or exceeds all of the statutory standards required by the Harford County Code. The surrounding area is zoned Agricultural, the parcel exceeds 2 acres in size and is itself zoned Agricultural. The trucks and commercial equipment are proposed to be entirely screened from view of adjacent residential uses, there are no signs.

## Case No. 5152 – David B. Lawrence

Having met the statutory burden of proof, the Protestants then bear the burden of showing that this special exception use at this particular location has impacts different or unique than this same use at some other location within the Agricultural zone and that these different impacts are so materially adverse to adjoining or neighboring property owners that the proposed use should be denied.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

## **Case No. 5152 – David B. Lawrence**

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

**“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.**

The Applicant's use involves the storage and use of large commercial dump trucks. This use has inherently associated with it some noise and the need for ingress and egress to County Roads. The protestants have failed to demonstrate that the Applicant's use at this location has any adverse effects above and beyond those normally associated with this type of use regardless of its location in the AG zone. The Hearing Examiner is not unconcerned with potential traffic hazards on Norrisville road but finds that the concerns expressed by those in opposition in this regard, can be adequately addressed by improvements to the entrance and upgrade to a commercial point of ingress/egress.

The Hearing Examiner, therefore, recommends approval of the proposed Special Exception subject to the following conditions.

1. That the Applicant obtain any and all necessary permits.
2. That the Applicant submit a detailed site plan for review and approval by the Department of Planning and Zoning. The plan shall show the storage area, location of the proposed building, and the improvements to the entrance as described in Condition 3 below.
3. That the Applicant upgrade the entrance to Norrisville Road by both widening the entrance and improving site distance. The Applicant shall obtain a commercial entrance permit for the access point to MD Route 23, Norrisville Road.

**Case No. 5152 – David B. Lawrence**

4. That the storage of vehicles on the subject parcel be limited to the Applicant's personal automobiles and the equipment described in testimony taken herein and shall be limited to one (1) track loader, one (1) back hoe, one (1) bulldozer, seven (7) dump trucks and a DOT approved fuel tank with a capacity not to exceed 1,000 gallons.
5. That all equipment shall be stored either within the proposed pole building or in an area that is entirely screened from view of adjacent residential uses. Additional screening shall be planted as needed to comply with this condition.

**Date: SEPTEMBER 10, 2001**

**William F. Casey  
Zoning Hearing Examiner**